

**Litchfield Planning Board**

**May 5, 2009**

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Minutes Approved 6/16/09**

**Members present:**

Alison Douglas, Chairman  
Edward Almeida, Vice Chairman  
Marc Ducharme, Clerk  
Leon Barry  
Steve Perry, Selectmen's Representative  
Carlos Fuertes, Alternate

**Members not present:**

Jayson Brennen

**Also present:**

Joan McKibben, Administrative Assistant  
Steve Wagner, Nashua Regional Planning Commission, Circuit Rider

**AGENDA**

**1. Application acceptance for a plan amendment Map 2 Lot 86 Heritage Park off of Cutler Road** Lion Development Corp requests the clarification, modification or waiver of Note #28 on the approved site plan that states "The Community Center is to be built when 50 percent of the units are completed".

**If the aforementioned application is accepted, notice is hereby extended to application approval consideration and/or continuation(s) to a date certain, as required.**

**2. Application acceptance for a plan amendment Map 4 Lot 10 Blossom Court off of Page Road** Lion Development Corp requests the clarification, modification or waiver of Note #28 on the approved site plan that states "The Community Center is to be built when 50 percent of the units are completed".

**If the aforementioned application is accepted, notice is hereby extended to application approval consideration and/or continuation(s) to a date certain, as required.**

**Any Other Business:**

**Correspondence  
Approval of 4/21/09 minutes**

Chairman Douglas called the meeting to order at 7:10 p.m. Chairman Douglas appointed Carlos Fuertes as a voting member.

**1. Heritage Park – Plan Amendment Map 2 Lot 86**

Attorney Charles Cleary representing Lion Development Corp., Attorney Cronin of Butler Bank, Town Counsel Steve Buckley, Kevin Lynch (Code Enforcement Officer) and residents of Heritage Park and Blossom Court were present.

Mr. Leon Barry recused himself as he is an abutter.

Mrs. Douglas: First we are going to act on application acceptance.

Mrs. McKibben said all abutters have been noticed and fees paid.

Mrs. Douglas: At this time, I am going to ask Attorney Cleary to present his case. After that, if the public has any comments on the application itself, just the application, we will let you speak and if you have anything further to say afterwards, then that will be at another time. So, you will eventually be able to talk.

Att. Cleary: Charles Cleary for Lion Development Corporation, we are speaking on Heritage Park at this point and Lion is the owner of Units 13, 15, 23, 25, 27 and 29. It bought those condominium units sometime ago. On the site plan, as we all know, there is a Note #28 which states that the community center is built when 50 percent of the units are completed. Lion purchased these units and received building permits and went ahead and constructed pursuant to those permits and finished the units it purchased and, at that time, it was denied certificates of occupancy and the basis for that denial was this note on the plan - not an ordinance or a site plan regulation but the Planning Board's note that was placed at the time of original approval. As a result, the note is preventing any and all use of these units by my client; they cannot be used whatsoever. Lion cannot achieve any return on its investment; it really has nothing in the way of an asset at this point and it is important to us to move forward without undue delay because of the money we have invested in the building permit and the project. I understand that the Board is treating the note as a condition of approval. What we are asking is for you to consider this situation that we are in today in relation to that note. When the note was prepared, it seems clear to me that the note is a directive; it is directing to the declarant for the developer you shall complete the community center when 50% of the units are built. We now all find ourselves in a situation we cannot identify a declarant; we cannot identify the developer who has that existing obligation, so, to sort of treat the note in a vacuum and continue to deny CO's gets us no where. It accomplishes neither a purpose of the Board nor the general purpose of the Town which is to encourage and make available senior housing in this development. What it does do, unfortunately, is it could result in a taking of Lion's property. Under the status quo if we continue and Lion could never make use of those units and since we cannot identify the declarant to construct that community center, Lion has been deprived of all of its property and all of its investments. The plan cannot be read as intended by the Planning Board to punish a unit owner; that cannot be the intent of the Board. It seems to be more of a directive to a declarant or developer, yet, here we

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2 are a non-responsible party, Lion Development, a unit owner is the only one being  
3 deprived of any rights. Existing unit owners have full access and enjoyment of their units  
4 and wherever the declarant is, they are not being denied CO's. Furthermore, not only  
5 does Lion not have responsibility to build the community center, it does not have the  
6 authority. We do not have the right to go on the common land and build that community  
7 center; so, again the note is misplaced in our current situation. It was applicable at the  
8 time of approval but it no longer has any legitimate effect.  
9

10 Att. Cleary continued...Another issue, as we approach the 50 percent threshold  
11 mentioned in your note, Litchfield did not withhold any building permits or CO's. It got  
12 all the way to the 50 percent and then slammed the door shut. It is illogical that you  
13 wanted the community center fully built and yet waited until the 50 percent mark to shut  
14 the door. All...unit owners are deprived, all prior unit owners are benefited, it creates a  
15 real adverse relationship between the two groups. The withholding of CO's, the building  
16 inspector is following your note, your directive and withholding CO's on the basis of an  
17 amenity not being constructed. CO's generally and typically are withheld for life safety  
18 items or items where regulations have been violated. There is a whole...of remedies  
19 available for the town in this respect and some of which could be more suitably directed  
20 at the declarant or a broad group of people and accomplish whatever purpose you are  
21 trying to accomplish. This is so narrowly focused at one person, my client, that it seems  
22 unduly unfair.  
23

24 Mrs. Douglas: I think this kind of goes a little bit further into extending the application  
25 for approval, wouldn't you say, Steve (Perry)?  
26

27 Mr. Perry: He is going to say what he has to say either now or then; so, it is up to you.  
28

29 Att. Cleary: I am just going to complete my argument and then I am done. As I said, we  
30 do not have a party to enforce your note against. We cannot identify who the declarant is,  
31 so, it is a condition that cannot be fulfilled; is it impossible to perform. So, the law often  
32 allows modification or a change to the condition so that your purposes and my client's  
33 rights, invested interest, can proceed. What we are proposing that is in fairness to Lion  
34 Development, the Board is to waive the note for the time being as unenforceable until a  
35 declarant is identified or until such time as the Board deems appropriate or clarify the  
36 note and interpret it to mean that the community center was supposed to be completed  
37 after 50 percent of the units are completed and then give some real period of time in  
38 which to complete it so we do not have that slam door instantaneous problem where only  
39 one party is deprived of the CO's. This way there will be a period of time, I recommend  
40 you put people on notice of the note and before the project is completed you will have  
41 this condition met. So, that is our request in respect to Heritage Park tonight.  
42

43 Mrs. Douglas: Do I have anybody else to speak just to the acceptance of the application  
44 not the approval of the application?  
45

1  
2 Mr. Richard Greig, 11 Candleridge Circle: Unfortunately, I think Attorney Cleary  
3 has made a few errors. First off, Unit 29 as you cited as belonging to Lion Development  
4 was sold back in December; he is a little bit behind. Lion Development does not own  
5 that unit anymore and they are not entirely without benefit as far as these units go  
6 because there are only three units of the five that they own that are currently unoccupied;  
7 the other two are being rented. So, they are receiving benefit from those units. In  
8 addition to that, I have to take issue with the fact that they are the only ones that are  
9 suffering because I think this whole community is suffering in the fact that we lack a  
10 community center and a centralized place to meet. When we have to meet now, and we  
11 have our annual meeting coming up, we have to impose upon a homeowner and try to  
12 jam everybody into the homeowner's unit in order to have a meeting and if they have  
13 occupancy permits and jam more people into those units, it will be more difficult to find a  
14 place to meet. So, I do not believe that Lion Development are the sole people who are  
15 suffering; we are all suffering. There are other amenities besides the community center  
16 which unfortunately are not the condition of the plan which are not in place either.

17  
18 Mrs. Douglas: I appreciate your comment and if you would like to speak a little bit later  
19 but right now we just want to be able to accept the application which the application is to  
20 request clarification, modification or waiver of Note #28 of the approved site plan.

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22 Mr. Ducharme: So, which one are you requesting? Are you requesting a waiver to the  
23 note or you want us to clarify it?

24  
25 Att. Cleary: Either one. My request was waive, modify or clarify. It depends on the  
26 situation we find ourselves and what works for the Board; it is your note. I think Lion  
27 Development is not the appropriate victim for that note to apply to, so, if you waive it,  
28 waive it only to Lion.

29  
30 Mrs. Douglas: We are not acting on that...we are just acting on the application and the  
31 fees have been paid and the abutters have been notified so we can act on the actual  
32 acceptance of the application then move forward after that. Do I have a motion from the  
33 Board to accept the application?

34  
35 Mr. Almeida **MOTIONED** to accept the application for a plan amendment Map 2 Lot 86  
36 Heritage Park off Cutler Road Lion Development requests clarification, modification or  
37 waiver of Note #28 on the approved site plan. Mr. Perry seconded. Motion carried 5-0-0.

38  
39 Mr. Wagner explained to those present that this is basically saying that the paperwork is  
40 acceptable for the Board to take into consideration and has nothing to do with the final  
41 decision.

42  
43 Mrs. Douglas: It has nothing to do with the final decision. It is just the paperwork has  
44 been accepted and now we are going to open this up for approval for consideration  
45 approval.

## Litchfield Planning Board

May 5, 2009

1  
2 Ms. Douglas opened the meeting to public comment but at this time Mr. Almeida  
3 interrupted to say he would like to make a motion. Mr. Almeida **MOTIONED** that the  
4 Board or we agree with Kevin's (Lynch) interpretation of the plan that it was upon 50  
5 percent completion, once 50% built that the clubhouse was to be built and we agree with  
6 that interpretation as he has enforced. Mrs. Douglas: That is clarification of it. Are we  
7 going to give these people time to speak?

8  
9 Mr. Wagner: I think the motion is made is just to set the stage as to where we stand; that  
10 we did interpret the note to exactly what Kevin did.

11  
12 Mr. Almeida reiterated the motion: The Motion is to accept Kevin's interpretation of the  
13 note that the clubhouse is to be built once 50% of the units were complete.

14  
15 Mrs. Douglas: Do I have a second to that motion?

16  
17 Att. Cleary: May I make a comment Madam Chairman, just to clarify because Kevin is  
18 not here.

19  
20 Mr. Kevin Lynch stepped forward.

21  
22 Att. Cleary: That is what the note says, can you explain a little further what Kevin's  
23 interpretation is that you are agreeing with. Exactly what that means?

24  
25 Mr. Almeida: That the CO's were to be held up.

26  
27 Mrs. Douglas: Constructional completion is 50 percent, at least 50 percent and therefore  
28 the community center was to be built; it is not. It is 50 percent complete and it was his  
29 determination based on the note on that plan that he held up the CO's.

30  
31 Att. Cleary: This is the Planning Board's note and you are adopting Kevin's  
32 interpretation of it.

33  
34 Mrs. Douglas: No...it was the interpretation...

35  
36 Mr. Perry: Let's have a point of order here. We have a motion on the floor; we need to  
37 have a second or we need the motion withdrawn and then we can move on with  
38 discussions.

39  
40 Mr. Almeida: I retract the motion.

41  
42 Mrs. Douglas: It was the intention of the Board when the plan was before us with the  
43 developer at that time and what happened to him regardless of the economy or whatever,  
44 is not our problem. I am sorry. And we determined that 50 percent of completed  
45

1  
2 construction that there would be a community center - that is what our intent was. That is  
3 how Kevin, Kevin is that what your interpretation was?  
4

5 Mr. Lynch: Yes.  
6

7 Chairman Douglas opened the meeting to public comment.  
8

9 Attorney Cronin: Madam Chairman...I am an attorney for Butler Bank and I would agree  
10 with comments from the floor that I think all of these people here are good people, well  
11 intentioned and they are all victims of a bad economy and a developer that did not follow  
12 through in the way that he had promised. As the Board probably knows from their  
13 executive sessions that the bank has been sued as a successor declarant and when we  
14 were here last meeting there were some opinions offered that the bank, in fact, was a  
15 successor declarant. I just want to make it clear on the record after spending a lot of hours  
16 and painstaking detail in title that the bank adamantly opposes that. What is happening  
17 here tonight is what I understand Lion is seeking some relief from that particular note and  
18 when you look at hindsight, the picture is always very clear and what that Planning Board  
19 was thinking when they did that note, I think we can all agree is the intent was to have a  
20 clubhouse when 50 percent of the units were built. We know today that did not happen  
21 and I respect the Board's position they do not believe it is their problem. I tend to  
22 disagree with that when you take money for a building permit and you give someone the  
23 authorization to go ahead and build knowing that clubhouse is not built, I think there is a  
24 very clear issue of...I do not want to get into that; I do not think it is necessary to get into  
25 that to have an issue here that can modify those completed units, that it satisfy the strict  
26 statutory requirements for occupancy permits which is based on quality construction:  
27 Does it meet the building code? Is it safe? Is there any risk to the public? Well, if there is  
28 a risk, or we say there is a risk, that would be the same risk that all of these people here  
29 suffer. So, to deprive these people of the opportunity to occupy those units and live in  
30 them will create two different classes and we do not believe into that sphere or it is  
31 allowed by the law. We have enough litigation going on in this thing to make us all busy  
32 and we do not want anymore of it. I think there is also, and Kevin will correct me if I am  
33 wrong, there are provisions in the occupancy permit law that specifically provides that a  
34 community can give temporary occupancy permits that would allow someone to occupy  
35 the unit subsequent to conditions being filled. And again looking at hindsight, I look at  
36 that note, that note does not have language that some of us would wish was there; maybe  
37 which says if 50 percent of the units are built and there is no clubhouse, we won't issue  
38 building permits at 50 percent of the buildings are built and the clubhouse is not finished,  
39 we are going to deprive somebody of occupancy permits. In fact, there is no remedy that  
40 is stated there whatsoever; none. All it says should be built when 50% of the units are  
41 done. It has not happened. What is the remedy? Well, it certainly is not the note. There  
42 are standards in which the building official can undertake cease and desist measures  
43 when there is noncompliance with the plan that I suggest if that would not be able to be  
44 isolated to these particular units, it would cause further disruption for these good people  
45 in the room. I think there is no consequence to the town unless there is some health and

1  
2 safety issues that I am not aware of to allow these units that are built to be occupied and  
3 to specifically state that no further building permits will be issued for those units that  
4 have not been started until this clubhouse is done. I think that is a fair and equitable  
5 resolution. Thank you for your time. I know this is unusual, some of us that have gone  
6 through this in 89 to 93 and you folks have been put in a predicament that is  
7 unusual for you, it is unusual for us, we hope not to see it again and it also presents  
8 problems for all of these people here. So, I just appreciate you consider it and weighing  
9 all the options. Thank You.

10  
11 Mrs. Douglas: One thing you said and I would like to clarify the note says the community  
12 center "is" to be built when 50 percent, not "should" be built.

13  
14 Att. Cronin: Okay...my point there was not that it should have been, my point was that  
15 there is no...

16  
17 Mr. Perry: Is it not part of the process to issue a CO to comply with all aspects of the  
18 plan?

19  
20 Att. Cronin: Generally not.

21  
22 Mr. Perry: I mean how did you know where to build it?

23  
24 Att. Cronin: How did you know where to build it?

25  
26 Mr. Perry: Yea, it seems you would look at the plan right?

27  
28 Att. Cronin: You would have to look at the plan.

29  
30 Mr. Perry: Why wouldn't you read the notes when you looked at the plan?

31  
32 Att. Cronin: I am not saying you wouldn't read the notes; everyone would read the notes.  
33 Not a problem if you go to the registry you would look at the notes but that note does not  
34 say anything about a remedy. It does not say that the Planning Board or the building  
35 official won't give you an occupancy permit.

36  
37 Mr. Perry: So, why wasn't the question asked before the units were built?

38  
39 Att. Cronin: Well, that is a great question; I wish I were here.

40  
41 Mr. Perry: As we were told by Mr. Cleary the note was never seen until it was too late.

42  
43 Att. Cronin: Not for Lion I am sure, Lion was not around when this was approved.

44  
45 Mr. Perry: Unfortunately, that is what Lion told us when they made these purchases.

1  
2 Att. Cronin: So, what is the relevance to that?

3  
4 Mr. Perry: The relevance to that is when you have a plan in front of you, you should look  
5 at the plan and know exactly what you are getting into before you start because now you  
6 are putting a burden on us to change the rules to make it more convenient for you.

7  
8 Att. Cronin: Not really, the burden I think is let's not issue a building permit and you  
9 would not have that problem; you would not have someone investing money into a unit  
10 that is sitting there that is not going to be occupied and if it was not for the settlement  
11 negotiations and as I understand these folks would like the bank to come forward and  
12 write some pretty hefty checks and if I was sitting in their seats, I would want the same  
13 thing to happen and they would probably stand up and oppose the issuance of certificate  
14 of occupancy permits because it is the right thing for them to do for negotiating leverage.  
15 But the truth be told if you get people in those units, they are contributing to the monthly  
16 fees every month, it helps that association pay their insurance, pay their maintenance  
17 fees; that is better for the units and it is better for the association.

18  
19 Mrs. Douglas: Let me ask the both of you when do you propose a community center to  
20 be built?

21  
22 Att. Cronin: I do not think anyone here can control that. I think the Association...

23  
24 Mrs. Douglas: I did not ask about control. I asked when you propose a community center  
25 would be built for these people; some of these people that bought into this development  
26 thinking there was going to be a community center.

27  
28 Att. Cronin: You are asking the wrong person. That note does not say anything about a  
29 bond; that would be something that a planning board often does is to require a bond for  
30 those improvements. Those questions should be asked the president's of both boards  
31 because the same fashion of working with your plan and checking the notes, these folks  
32 have a legal obligation and I do not expect people to do it, they go to a closing and take  
33 their deeds they have a responsibility in their deeds, in their condominium instruments  
34 and the plan. So, it is the Association and these folks that would have the responsibility to  
35 tell you when they plan to complete those clubhouses and I am not being smart with that;  
36 that is the legal conclusion.

37  
38 Mr. Perry: Wouldn't you agree that the property owners now that are in those units have  
39 already paid their dues toward that community center?

40  
41 Att. Cronin: I have no idea.

42  
43 Mr. Perry: When you buy a house, you would expect it be sided and shingled and things  
44 like that, correct?



1  
2 Att. Cronin: When I buy my house I get an inspector to inspect it. I review the title and if  
3 the work is not complete, I would ask the builder to escrow a certain amount of money.  
4 They have a duty, and no one wants to hear it, to know what they are buying. They  
5 should know what they are getting into. Is it their fault? Of course not. The 90% of the  
6 people who go to a closing, sign the documents and expect the builder to follow through,  
7 happens every day in every state in the country but certainly the bank is not a guarantor, I  
8 wouldn't not expect Mr. Perham, who is in the same legal position as us, to come forward  
9 and tell you when that clubhouse is going to be built; I really wouldn't. So, the banks  
10 have some money; they are easy targets but I am dealing with what the legal  
11 requirements are.

12  
13 Mr. Wagner: I am not a lawyer so I do not know what the workings are in a situation like  
14 this but a comment was made that there is no declarant, nobody identified to be  
15 responsible for the building of the clubhouse and I am curious as to how that  
16 responsibility could evaporate. We may not know who it is but that responsibility still  
17 exists and to my understanding the responsible parties they are all sitting in this room so  
18 somebody here has to be responsible for building it.

19  
20 Att. Cleary: I think the person responsible is not in the room unless Mr. Berube has  
21 come in since I have walked in.

22  
23 Att Cronin: The declarant is a defined person at the Registry and the Attorney General's  
24 office. That declarant still exists; there was an attempt of that declarant to file bankruptcy  
25 that there was a motion filed by I believe one of the unit owners and maybe several to  
26 dismiss it from bankruptcy. So, that entity has declared this condominium that was given  
27 the approvals by this Board, that was given the original building permits, that is still a  
28 legal entity in the State of NH and still has the obligations of the declarant.

29  
30 Member: Have you asked that legal entity to build the clubhouse?

31  
32 Att. Cronin: We asked them to do a lot of different things like pay about the \$700,000  
33 that they owe us and they do not respond.

34  
35 Mr. Ducharme: So, yes, you did ask them to build the clubhouse?

36  
37 Att. Cronin: Several times.

38  
39 Mr. Perry: So, you can sell off the units or the open space where the units are supposed  
40 to go. You have the right to sell that off; you have the right to make the money back on  
41 that aspect but you take no responsibility to fulfill the plan?

42  
43 Att. Cronin: As a bank, that is exactly right. You can foreclose your mortgage and you  
44 can sell some or all of the security. If you did not pay for instance the mortgage on your  
45 house, assuming there is one, your bank can come in and they could sell at foreclosure to

1  
2 any third party and they would have no responsibility if you had lead paint, if you had  
3 any hazards, they are just selling off collateral and that is all that the bank can do in this  
4 case.

5  
6 Mr. Wagner: If Berube has rights in this case, then how can we take any action without  
7 him taking action against us in taking those rights away from him?

8  
9 Att. Cronin: I have no idea.

10  
11 Att. Cleary: We are not asking to take rights away from Berube, we are simply saying  
12 because Berube won't come forward and stand up for what he promised to do, just do not  
13 hold one unit liable for that. That is really the request.

14  
15 Mr. Perry: I would think that would be your responsibility to get that.

16  
17 Att. Cleary: From Berube?

18  
19 Mr. Perry: Yes, either get it from him or get it from the court.

20  
21 Att. Cleary: I guess I do not understand why one unit owner needs to do that versus...

22  
23 Mr. Perry: You are not just one unit owner; you are a vested interest. You bought from a  
24 bank with the theory you were going to make money, correct?

25  
26 Att. Cleary: As most people do when they buy a unit, yep.

27  
28 Att. Buckley: I just want to say that Attorney Cronin is right, if I last month had  
29 suggested that Butler Bank has ownership interest in the units, that is correct, they do not  
30 have an ownership interest, they have a mortgage on the balance of units that have not  
31 been foreclosed on this particular project. I guess I would suggest that the bank did get an  
32 assignment from Berube of the rights to the permits that were granted by the town and  
33 that is at the Registry of Deeds and, in fact, that assignment makes very clear that in the  
34 event of a default, the assignment will allow the bank, now then there is the question does  
35 it obligate the bank, but it will allow the bank to complete the project. So, I think it is  
36 material for the Board to keep in mind the bank did get this assignment of the permits  
37 that you granted and I think you could infer that that assignment carries perhaps some  
38 responsibility on the bank's part, Attorney Cronin may disagree but I think that  
39 assignment is of record and suggest some continuing obligation on the bank's part to see  
40 that the project is completed.

41  
42 Mr. Ducharme: So, you are saying they could build the clubhouse?

43  
44 Att. Buckley: Well, I am not saying that the assignment constitutes a binding legal  
45 obligation but I think with that responsibility, with the granting of that assignment by

1  
2 Berube, perhaps some responsibility follows that assignment.

3  
4 Att. Cronin: Just to clarify, that is a collateral assignment, correct?

5  
6 Att. Buckley: I have here, you can interpret it the way you think it is; I found it at the  
7 Registry.

8  
9 Att. Cronin: This is a collateral assignment. It reaches a very typical low document in any  
10 construction project and it is our position it does not obligate the bank to do anything it  
11 would not have to do on its mortgage.

12  
13 Mrs. Douglas: Do you own the permits?

14  
15 Att. Cronin: No, we don't.

16  
17 Mrs. Douglas: You do not own the permits. Is there anybody from the public who wishes  
18 to speak to this?

19  
20 Mr. Bob Perham, 41 Arbor Circle: We live in the other development, Blossom Court.

21  
22 Mrs. Douglas: Okay but we are dealing with Heritage.

23  
24 Mr. Perham: My comment is related with this. Let's assume you let them do their thing  
25 here and they can get their occupancy permits, how does the clubhouse ever get built?  
26 If we can't find the person responsible for it, he is in parts unknown and nobody is  
27 willing to go after him as far as trying to either sign off the rights to it or whatever, where  
28 is this going to end, either Heritage or we get to the other one, where is that going to  
29 leave us?

30  
31 Mr. Wagner: That was the intent of the note...that it was leverage.

32  
33 Att. Cleary: That is what I signed into, the same result is reached both ways; how is the  
34 clubhouse going to be built if you continue to deny the occupancy permits. All that  
35 happens is you do not sell more units; you get half a condo. That is not the answer to the  
36 question, the answer is it does not involve Butler Bank or anything else. The question is  
37 once you grant building permits to Lion Development and let them construct, is it fair to  
38 them to hold CO's on a note of which they have no responsibility, control or authority.  
39 That is all we are asking; the bigger question cannot be answered.

40  
41 Mr. Greig: I think nobody held a gun to Lion Development's head to purchase those  
42 properties or to continue to develop them. Any reasonable person would have known that  
43 the note was on the plan. I knew it was on the plan and everybody else in the  
44 development knew what was on the plan. We all expected to have a clubhouse built as I  
45 said we need one, this is a place to meet because it is very crowded and if there is more

1  
2 people there, it will be more crowded and less likely to have a place to meet. Nobody  
3 asked them, nobody forced them to go out and continue to build knowing that there had  
4 to be a clubhouse at some point in time. They could have certainly stopped at any point in  
5 time with the units half done, quarter done, nobody forced them to finish the units  
6 completely which they did. So, now they have three complete finished units sitting there  
7 which they can't use but nobody forced them to finish those. In fact, in my mind, it would  
8 have made good sense not to finish them until they had a potential buyer because a buyer  
9 might want to come in and want different counter tops or something and they are all  
10 done. So, there is even less likelihood that they will be able to sell these units because  
11 they may not appeal to the mass market because of the way they were finished. It just did  
12 not make sense to us and continues not to make sense that Lion Development and Butler  
13 Bank who are closely tied together, although they maintain that they are separate  
14 corporations and we understand legally they may be but the people who run those two  
15 corporations are one in the same people. Certainly they have some sort of responsibility  
16 to at least face up to the fact that maybe it is a good idea to finish the project so they can  
17 get their money back. We have continually tried to negotiate with them and I think given  
18 up some major concessions and have received no response from them. So, at this point in  
19 time, it seems like they just want to stonewall it and hope that they are going to force  
20 something through and we are opposed to it. All the resident unit owners who live there  
21 every day are opposed to making any changes to the plan until we see some resolution in  
22 sight for the clubhouse and in addition to the other amenities.

23  
24 There were no further comments. Chairman Douglas closed public session.

25  
26 Mrs. Douglas: Is there any further discussion from the Board?

27  
28 Att Cleary: Madam Chair, given what has taking place so far and understanding the  
29 comments of the Board, we will withdraw both applications. It does not appear that this is  
30 going to be taking the consideration we were intending so we will withdraw the  
31 applications and seek another remedy.

32  
33 At 7:50 p.m. All those present left the meeting except for Town Counsel (left shortly  
34 after) and the Building Inspector.

35  
36 Mrs. Douglas: Let the minutes show that the applicant has withdrawn their application  
37 Map 2 Lot 86 Heritage Park off of Cutler Road and let the minutes show the applicant  
38 also withdrew the application acceptance for plan amendment Map 4 Lot 10 Blossom off  
39 of Page Road. Mr. Barry returned to the Board.

40  
41 **ANY OTHER BUSINESS**

42  
43 **Flood Maps** - The Board of Selectmen will hold a public hearing on May 18, 2009, at  
44 7:00 p.m. in the Town Hall Meeting Room as required by FEMA. The maps will be  
45 effective September 25, 2009.

**Litchfield Planning Board**

**May 5, 2009**

**Annandale** - Mrs. McKibben told the Board that she received the plan amendment today for Annandale regarding changes approved previously by the Board. The plan was reviewed and signed. She told the Board that the proposed new owner will be posting a new bond; the existing bond will expire May 21, 2009. Also, there will be a preconstruction meeting with the new owner.

Mr. Barry mentioned he has seen some backhoe activity on the site; possibly taking out loam. Mr. Lynch was asked to investigate the matter and get back to the Board.

**Restoration Bond** – The owner of a gravel pit is requesting release of the restoration bond. Mr. Ducharme reported that he visited the gravel pit located at 109 Charles Bancroft Highway as requested by the Board. He said that there are a couple of spots that need detention and then asked that Mr. Lynch to look at the site.

**Cell Tower** - Mr. Lynch discussed a proposal for the installation of a cell tower at Tabernacle Church. He is in the process of reviewing the plans in order to make a determination as to whether or not a variance will be required.

**Driveway Regulation** - Mr. Lynch said if he recalls, the Town does not have anything on driveways. He said there has never been a problem because Litchfield mostly consists of flat surfaces. Mr. Wagner is working on a regulation and it should be completed soon. Mr. Lynch said to keep it simple.

**Building code** - Mr. Lynch will meet with the Board on May 19, 2009, to discuss the building code and permitted uses in the districts.

**Minutes of Meeting** - Mr. Barry **MOTIONED** to accept the minutes of April 21, 2009, as amended. Mr. Perry seconded. Motion carried 5-0-1.

There being no further business, Mr. Barry **MOTIONED** to adjourn the meeting. Mrs. Douglas seconded. Motion carried 6-0-0. The meeting adjourned at 8:40 p.m.

Lorraine Dogopoulos  
Recording Secretary

DATE \_\_\_\_\_

Alison Douglas \_\_\_\_\_  
Edward Almeida \_\_\_\_\_  
Leon Barry \_\_\_\_\_  
Marc Ducharme \_\_\_\_\_  
Carlos Fuertes \_\_\_\_\_  
Steve Perry \_\_\_\_\_